

month from the same farm (except a nonpool plant that has no utilization of milk products in any Class other than Class III or Class IV) as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets*.

§ 1135.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer, a handler described in § 1000.9(c), or a handler described in § 1135.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) or in § 1135.11 in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1135.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until one day's milk production has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 90 percent;

(3) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk

which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1135.12(b)(5); and

(6) The delivery day requirement in paragraph (d)(1) and the diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.